IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SIXTEENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION No: 24964 of 2005

Between:

M/s. Kakatiya Alloys (P) Limited,

Having its registered office at

8-1-366/A, Tolichowki, Hyderabad,

rep., by its Managing Director, R. Soma Raju.

..... PETITIONER

AND

1. The Andhra Pradesh Electricity Regulatory

Commission, Red Hills, Hyderabad, rep., by

its Chairman.

2. The Andhra Pradesh Transmission Corporation

Limited, Vidyut Soudha, Somajiguda, Hyderabad,

Rep., by its Chairman-cum-Managing Director.

3. The Non-Conventional Energy Development

Corporation of Andhra Pradesh Limited, Nampally,

Hyderabad, rep., by its Managing Director.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ of Mandamus or any other appropriate writ, order or direction declaring the order dated 20.03.2004 passed by the Hon'ble Electricity Regulatory Commission, 1st respondent herein to the extent of fixing the Tariff in respect of Poultry Waste based power projects on par with Biomass based power projects as illegal, arbitrary, erroneous, null and void and violative of Article 14 and 19(1)(g) of the Constitution of India and consequently direct the 1st respondent herein to treat the poultry waste based projects including the petitioner on par with Municipal Solid waste based projects for fixation of Tariff.

Counsel for the Petitioner: MR.A.V.SESHA SAI

Counsel for the Respondents: SC FOR APSEB

The Court made the following:

ORAL ORDER:-

It is the common refrain of the learned counsel for the petitioner and of the respondents that the petitioner has available an alternative and efficacious appellate remedy to the appellate Tribunal constituted under Section 111 of the Indian Electricity Act, 2003 (for short 'the Act') and that the appellate tribunal has also been appointed by the Central Government under Section 110 of the Act and is functioning, and therefore, the petitioner may approach the appellate forum.

The Writ Petition is filed aggrieved by an order of the first respondent – A.P. Electricity Regulatory Commission, dated 20-03-2004, to the extent the commission has fixed the tariff payable by the petitioner on par with the tariff fixed for Biomass based power projects.

The petitioner claims that, as the raw material through which the power is generated by its plant is environment friendly, the tariff in respect of the power generated by it should be fixed on par with the tariff determined for other similarly situated non-

conventional energy generating industries and not on par with the Biomass based power projects. These questions involve an ascertainment and evaluation of the factual issue whether the petitioner is employing a process which is environment friendly and even if so, whether the process is environment friendly to a degree comparable with other non-conventional energy generating industries as to constitute a singular class for the purposes of classification parameters under Article 14 of the Constitution of India. These factual aspects are more appropriately determined in the first instance before the Appellate Tribunal constituted under Sec.111 of the Act.

In the circumstances, the Writ Petition is dismissed with liberty to the petitioner to approach the Appellate Tribunal, for relief against the order of the first respondent– Commission dated 20.03.2004. By way of an interim order, dated 31.12.2004, this Court directed that no coercive steps should be taken against the petitioner for recovery of the energy charges on the basis of the tariff rate determined by the first respondent – Commission by its order dated 20.03.2004, pending the Writ Petition.

In view of the petitioner being relegated to pursue the appellate remedy before the Appellate Tribunal, this Court considers it appropriate to continue the said interim order for a period of three weeks so as to enable the petitioner to pursue appropriate interlocutory remedies also before the Appellate Tribunal in the appeal to be preferred by the petitioner. By way of abundant caution, it is made clear that nothing in the earlier interim order granted by this Court, which is continued herein for the above said period should be construed as an expression by this Court on the merits of the petitioner's claim and the same shall be considered by the Appellate Tribunal on the merits of the petitioner's appeal.

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GODA RAGHURAM, J

Date: 16.06.2005

Note:

Issue CC in

Three days.

(B/O)

ES/TSNR

To

1. The Chairman, Andhra Pradesh Electricity Regulatory

Commission, Red Hills, Hyderabad.

2. The Chairman-cum-Managing Director, Andhra Pradesh Transmission Corporation Limited, Vidyut Soudha, Somajiguda, Hyderabad,

3. The Managing Director, Non-Conventional Energy Development Corporation of Andhra Pradesh Limited, Nampally, Hyderabad.

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